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EXAMINER

KNOLL, CLIFFORD H

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/006,583
Filing Date: December 10, 2001
Appellant(s): BARZAGHI ET AL.

David J. Cushing
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/21/08 appealing from the Office action mailed 4/03/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct; however, please note following rejections are withdrawn herewith:

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claim 14 under 35 USC 101 is withdrawn. Examiner wishes to be on record that the pertinent arguments presented by the Applicant are persuasive only in light of the understanding

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that the claimed “computer readable medium”, or “computer transferable medium” as delineated in the specification (p. 7) is a storage element which is part of the controller CONT which can be seen in Figure. 1.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6496860	LUDTKE	12-2002
6779004	ZINTEL	8-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9, 11, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by LUDTKE.

Regarding claims 1 and 11, Ludtke discloses the method and the apparatus of two or more control units (e.g., col. 3, lines 39-44, “12,” “13”) connected to a master controller (e.g., col. 5, lines 21-24, “media manager”) through a common bus (e.g., col. 4, line 42, “IEEE 1394-1395 bus interface and functionality support”), the method comprising the steps of controlling the peripheral units (e.g., col. 3, lines 39-51, “allowing the video cassette recorder to send data to the computer 14 for display”), where each control unit submits information concerning data consumed and provided for, to the master control (e.g., col. 3, lines 32-37, “[i]f a conversion is necessary...”; or col. 9, lines 17-20, “events generated by the device go ... to the

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event manager 62” teach “information concerning...”), and spontaneously sends a message over the bus whenever data provided varies (e.g., col. 10, lines 24-27, “new_device” or “user interaction” event).

Regarding claim 2, Ludtke also discloses submitting information comprises the step of each control unit transmitting a structure of its own message of information provided (e.g., col. 9, lines 17-20, “events generated by the device go ... to the event manager 62”).

Regarding claim 3, Ludtke also discloses assigning a suitable address to each control unit (e.g., col. 1, lines 60-61, “unique address”; col. 5, lines 45-46, “address of destination”).

Regarding claim 4, Ludtke also discloses the spontaneously sending a message comprises a first portion comprising information concerning the control unit that has detected a data variation (e.g., col. 10, lines 24-27, “user interaction”), and information concerning control units that will consume the data in the sent message (e.g., col. 10, lines 2-6, “token value”).

Regarding claim 5, Ludtke also discloses where the information concerning the control units that will consume the data comprise a logic address for representing a group of control units consuming the same data item (e.g., col. 9 line 66 – col. 10, line 6; col. 10, lines 21-23, device registration and subsequent invocation constitutes a logic address for each control unit in the group).

Regarding claim 6, Ludtke also discloses a counter provided to each control unit that counts forward at each message sent (e.g., col. 5, lines 47-48, where the time stamp constitutes provision of a counter)

Regarding claim 7, Ludtke also discloses writing the value of said counter into every message that is sent by said each control unit (e.g., col. 5, lines 47-48, “time stamp”).

Regarding claim 8, Ludtke also discloses the sending message has a control bit to control regularity (e.g., col. 11, lines 4-8, “consistent notification mechanism to inform the client application when [isochronous] data is available for processing”).

Regarding claim 9, Ludtke also discloses disabling the master controller after having established the communication between said control units (e.g., col. 11, lines 43-60 discusses the establishment of communication in term of a flowchart (Figure 5). If the destination is on the topology map then “bridging” is unnecessary, and if conversion is not needed, then the format converter is unnecessary, thus disabling the master controller as the intermediary).

Regarding claim 14, Ludtke also discloses the program code and the medium with the program thereon, adapted to perform the steps of the method of claim 1 (e.g., col. 5, lines 22-24; col. 9, lines 56-61).

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over LUDTKE as applied in respective parent claims, in view of ZINTEL.

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Regarding claims 10 and 12, Ludtke discloses a device manager and event notification system for the devices, but does not expressly mention its application for radio link devices; however Zintel discloses this. Zintel discloses where the peripheral devices are for receiving, transmitting and processing signals in radio link systems (e.g., col. 45, lines 55-67, “device 900 includes a network adapter 908 ... appropriate to the particular network media 910 ... [which] can be any of various wired or wireless network media”). It would have been obvious to one of ordinary skill in the art to combine Zintel with Ludtke because Zintel expands the application of Ludtke’s device management and event notification to include devices that process signals in radio link system, thus increasing the functionality and connectivity of the devices that are managed (e.g., col. 1, lines 27-40).

(10) Response to Argument

Regarding claim 14, Applicant’s arguments (p. 10) are persuasive; however Examiner wishes to be on record that they are persuasive only in light of the understanding that the “computer transferable medium” as delineated in the specification (p. 7) is a storage element which is part of the controller CONT which can be seen in Figure. 1.

Remaining arguments are not persuasive:

Regarding claim 1, Applicant argues that the control units of Ludtke do not comprise a “single control apparatus” and thus do not anticipate the claimed invention (p. 11). However, Examiner maintains that the control units of Ludtke are sufficient to

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anticipate a single control apparatus; if there is a particular distinguishing limitation, Applicant has failed to provide it despite ample opportunity to do so. Moreover, if the Applicant intends a control apparatus as "single" to somehow distinguish from the Ludtke's units that comprise that apparatus, he has neglected to recite this limitation, albeit rather broad, in the claim. The claim recites a control apparatus; Ludtke provides said control apparatus. Again, absent any further recitation, no distinction can be found between the claimed control apparatus and Ludtke's control apparatus.

Regarding claim 1, Applicant further argues that Ludtke's "network is not managed in a distributed mode" (p. 12). Applicant apparently contradicts himself in argument, first requiring a "single control apparatus" and yet subsequently requiring control to be "distributed". In fact, to the extent the Applicant's argument for distributed control can be understood absent any support whatsoever in the claims, it would seem that Ludtke's distributed units function together as a "single control apparatus" because control is distributed among the units. Even this analysis is moot however, because the Applicant has neglected to positively recite any notion of distributed control in the claims themselves. To whatever extent the individual limitations in the claims are somehow ascribed to constitute a distributed control, Ludtke has been seen to anticipate each and every one of these limitations in turn, as recited in previous Office Actions, and maintained *supra*.

Taken together, the Applicant's argument for a "single control apparatus" and for a "distributed control" both argue points that find no support in the claims.

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Applicant further argues that the Examiner “dismisses all of the above distinguishing arguments as being directed to limitations... not recited in the claims”, and apparently accedes to this dismissal by stating, “[b]ut the examiner misses the point” (p. 12). Apparently the point is not that these limitations are not supported in the claims, but rather that they show how “the Ludtke system cannot be distributively controlled but instead requires the central control and constant intervention of the Media Manager” (p.12). As noted supra, the purportedly distinguishing feature of “distributed control” is not positively recited either. Apparently the Applicant is using features unsupported in the claims to establish a feature unsupported in the claims. Nonetheless, Examiner has noted supra that Ludtke’s system would be characterized by these terms even though they are not positively recited.

Applicant further argues that claim 1 “provides communication between control units. This is something critical in distributed control, but not in central control” (p.12). Examiner merely notes here that providing communication is critical in any form of control. Regardless of how Applicant is attempting to characterize Ludtke, it is clearly established that Ludtke “provides communication between... control units” as claimed.

Applicant further argues that Examiner’s position is that the VCR unit is the claimed peripheral unit “and then lacking anything else he can point to as a control unit, the examiner considers the VCR to also be the control unit”. Although the Applicant has in fact actually chosen at this point to argue about limitations that actually are found recited in the claims, he unfortunately misinterprets the Examiner’s position, which had

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been made clear in the Advisory Action (10/30/07) referred to by the Applicant (p. 13).

The relevant passage of the Advisory Action is quoted here:

Applicant further argues that Ludtke does not disclose “a peripheral unit controlled by each of the VCR 12 or set-top box 13. There are none” (p. 3); however Examiner has previously cited “allowing the video cassette recorder to send data to the computer 14 for display” (col. 3, lines 59-61) wherein the “allowing” is performed by the control unit of the device which interfaces over a standard bus via the control unit. Thus the peripherals have been adequately described. [Advisory Action 10/30/07, pp. 3-4 (Response to Arguments)]

The peripheral referred to in the passage above is the display device for a VCR; as further example, one can see that in Ludtke the “media manager of the present invention can also be implemented on any other capable device which includes the components necessary for providing an interface to the user” (col. 4, lines 17-21), wherein Ludtke’s “interface” and attachments are reasonably deemed peripheral to the central control function of the media manager itself. Apparently the Applicant rejects the characterization that would have a control unit and a peripheral physically housed in the same device, in this case a VCR. This would seem to render comprehensible the argument that the VCR is “both” the peripheral and the control unit and thereby cannot anticipate both limitations. However, the housing of control units and attendant peripheral functions is quite extensively found in all manner of devices, from personal computers to VCRs.

Applicant further argues that if the VCR or set-top box are the “claimed control units, the examiner must identify a peripheral unit controlled by each of the VCR 12 or set-top box 13” (p. 13). Examiner contends this makes it clearer that Applicant is unfamiliar with the housing of a control unit and a peripheral in the same enclosure.

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Although the previous description from the Advisory quoted supra, or additional citation, also supra, make such a configuration exceedingly obvious in Ludtke, one may also consider Figure 2, which depicts the arrangement of any device to be used in Ludtke, including the VCR used as the exemplary device by the Examiner. There, the control unit is the "CPU" while the peripheral is "User Interface or Other I/O" (where the bus common to devices is seen at "26"). Again, as noted, the housing of control units along with peripherals is exceedingly common; for example, the personal computer contains both a central processing unit and any number of peripherals. Because they are referred together as a "personal computer" does not mean that they cannot have both a control unit and peripheral housed within.

Applicant characterizes the Examiner's mapping as "some internal part of the VCR that may control a function of the VCR, and then reads the claimed 'peripheral unit' on some other internal part of the VCR which performs the function being controlled" (p. 14), but then argues that "this is a reading of the claim that would not be apparent to anyone of one of ordinary skill in the art" (p. 14). The Applicant's characterization of the mapping is adequate; however, it is noted yet again, the housing of components into a single enclosure is exceedingly common, as taught by Ludtke himself in Figure 2. Applicant has failed to distinguish his invention as somehow not being part of a single enclosure; Ludtke for example neglects to expressly mention that the "CPU" of Figure 2 and the "User Interface or Other I/O" may be removed from their enclosure and cast about a workbench; however, the claims fail to recite this or any other distinction that would overcome the application of Ludtke as anticipatory.

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Applicant further argues that “sending information to a DCM to tell the DCM what user input is occurring ... is not a discussion of the DCM sending message onto a bus” (p. 15); however, as seen the DCM manager of Ludtke allows an “application to inquire about the virtual devices that can be created based on the resources available on the network” (col. 8, lines 50-53). The fundamental concept of Ludtke is to allow control of and receive information from devices across a common bus.

Regarding claim 2, Applicant argues that Ludtke does not send “information regarding the structure of messages to be used by that control unit” (p. 16); however, this feature finds no support in the claims. Claim 2 recites that a control unit sends “a structure”, not “information regarding the structure”. Ludtke anticipates the invention that is actually recited, as seen in exemplary citations previously provided and recited supra.

Regarding claim 3, Applicant argues that Ludtke merely “*could have* respective addresses” (p. 16), however, at the cited passage, we see Ludtke explicitly describes “relevant data including address of destination” (col. 5, lines 45-46).

Regarding claim 6, Applicant argues that “a time stamp is not a same as a counter” (p. 16); however insofar as the Applicant has claimed a counter, the time stamp of Ludtke is adequate to anticipate it. The claims require “a counter that counts forward by a predetermined amount at each message sent”, and indeed the time stamp created for each message (col. 5, lines 47-48) precisely anticipates this limitation.

For the above reasons, it is believed that the rejections should be sustained.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

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